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No. 85-518

In the Supreme Court of the United States

OCTOBER TERM, 1985

JAMES PINCKARD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in vacating an order suppressing evidence seized under two search warrants.

On June 3, 1981, an indictment was returned in the United States District Court for the Southern District of Florida charging petitioners and 12 co-defendants with conspiracy to conduct the affairs of a labor union through a pattern of racketeering activities, in violation of 18 U.S.C. 1962(d). On February 19, 1982, the district court suppressed various records seized in warranted searches of two corporate entities operated by petitioners on the ground that the search warrants (Pet. App. 21-24) were impermissibly general in describing the evidence to be seized (Pet. App. 10-17).[1] The court of appeals, relying on *United States* v.

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[1]In reaching its decision, the district court expressly considered and rejected petitioners' alternate claims that the supporting affidavit failed to establish probable cause, that the affidavit was based on information

Leon, No. 82-1771 (July 5, 1984), and *Massachusetts* v. *Sheppard*, No. 82-963 (July 5, 1984), vacated the suppression order and remanded the case to the district court for a determination whether the officers acted in good faith in relying on the judicially-issued search warrants (Pet. App. 1-9).

Petitioners contend (Pet. 8-13) that the court of appeals' conclusion that this case "is within the good faith exception" (Pet. App. 7) and, accordingly, that it should be re-examined on that basis on remand conflicts with the principles enunciated in *Leon* and *Sheppard*. They further argue (Pet. 13-19) that the court of appeals improperly narrowed the inquiry on remand to the consideration of the officers' objective good faith in relying on the judicially-issued search warrants. Finally, petitioners complain (Pet. 19-22) that the court of appeals impermissibly issued an advisory opinion when it observed that "[o]n the facts considered by the district court in deciding whether to grant the motion to suppress, the good faith of the officers would be established" (Pet. App. 8).

Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.[2] In the first place, the court of appeals' decision did not definitively resolve the suppression issue. Rather, the case has merely been remanded for further proceedings — at which petitioners might prevail — to determine whether the seized evidence is admissible under a theory not previously considered by the district court. But beyond this, the court of

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provided by an unreliable informant, and that the affidavit contained material misrepresentations (Pet. App. 16-17).

[2]It is now over 52 months since the return of the indictment and over 41 months since the district court's suppression order. Further interlocutory review at this time would cause additional delay in trial of the charges against petitioners.

appeals' decision places petitioners in no worse position than they would have occupied if the district court had denied their motion to suppress in the first instance. Even assuming that the district court ultimately rules the evidence is admissible, petitioners' contentions will be moot if they are acquitted following a trial on the merits. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Acting Solicitor General

OCTOBER 1985

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[3]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.